

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KIMBRA CRISWELL	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 05-00321 GMS
LYDIA ADAIR MCFADDEN	:	JURY TRIAL DEMANDED
and	:	
CHRISTIANA CARE HEALTH	:	
SERVICES, INC.,	:	
Defendants.	:	

**PLAINTIFF KIMBRA CRISWELL'S RESPONSE IN OPPOSITION
TO DEFENDANTS' MOTION TO PRECLUDE PLAINTIFF FROM
PRESENTING EXPERT TESTIMONY**

Plaintiff Kimbra Criswell hereby respectfully requests that this Court deny Defendants' Motion to Preclude Plaintiff from presenting expert testimony at Trial. Plaintiff hereby respectfully requests this Court enter the attached Order modifying Discovery deadline and denying the Motion.

In response to Defendants' Motion, Plaintiff replies as follows:

1. Admitted as stated. By way of further answer, a case dispositive Summary Judgment Motion was filed by Defendants. Plaintiff responded; and Defendants filed their reply brief on January 3, 2007. The Court has not ruled on the Summary Judgment Motion. A Mediation was scheduled before The Honorable U.S. Magistrate Mary Pat Thyng on December 8, 2006. Since the Summary Judgment Motion had not been ruled upon, it was agreed by all parties that the Mediation would be adjourned and has been tentatively rescheduled to March 22, 2007 or March 23, 2007.

2. Admitted in part; denied in part. It is admitted that Plaintiff's expert report deadline was November 27, 2006 and Defendants' rebuttal expert reports were due

January 17, 2007. It is specifically denied that Plaintiff failed to provide any medical reports prior to her deadline. On the contrary, on May 18, 2006, Plaintiff forwarded responses to Defendants' Request for Production of Documents. Enclosed was a copy of the complete records of all of Plaintiff's treating physicians. See Exhibit A. These physicians are not retained or specially employed to provide expert testimony. As such, they are exempt from the report requirement of Federal Civil Rule of Procedure 26(a)(2)(B)(C). On January 10, 2007, Plaintiff forwarded the report and CV of their retained economic expert, Bunin and Associates. See Exhibit B.

3. Admitted as stated. However, it is specifically denied that Plaintiff is unable to prove damages at Trial without an expert report. To the contrary, Plaintiff has provided the records and reports of over a dozen medical providers. See Exhibit A. These physicians can and will testify consistent with their records. However, assuming arguendo, that Defendants require a narrative expert report to provide a rebuttal report, Plaintiff has proposed the attached Revised Scheduling Order:

Expert report shall be served on or before January 31, 2007 and
Rebuttal expert shall be served on or before March 15, 2007.
Plaintiff will be available for an IME.
All other dates shall remain in effect.

Inasmuch as the Mediation is not tentatively scheduled until March 22 or 23, 2007, that the Trial date is April 23, 2007 and that Defendants will be able to have the Plaintiff examined by their IME doctor, Defendants are not prejudiced by the proposed revision of the Scheduling Order.

4. See Plaintiff's response to Paragraph 3. By way of further answer, by letter of December 27, 2006, Plaintiff re-submitted the medical reports and records of

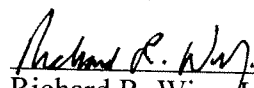
Plaintiff's treating physicians. See Exhibit A. The report and CV of Economic Expert, Royal Bunin, MBA, was provided. See Exhibit B.

5. See Plaintiff's response to Paragraph 1-4, supra.

6. Admitted as stated. By way of further answer, on May 18, 2006 and December 27, 2006, Plaintiff provided the voluminous medical records and reports of Plaintiff's treating physicians, none of whom were retained or specially employed to provide expert testimony and, as such, the production of their reports is not governed by 26(a)(2)(B)(C). Plaintiff respectfully submits that the information contained in these records allows Defendant to provide a rebuttal report. However, Plaintiff has proposed a Revised Scheduling Order regarding the exchange of expert reports.

7. Denied. See Plaintiff's response to Paragraphs 1-6, supra., and the proposed revised Scheduling Order.

Respectfully submitted,



Richard R. Wier, Jr., Esquire
Richard R. Wier, Jr., P.A.
Two Mill Road, Suite 200
Wilmington, DE 19806

Of counsel:
Nelson Levin, Esquire
Kats, Jamison, van der Veen & Associates
25 Bustleton Pike
Feasterville, PA 19053

Date: January 19, 2007

EXHIBIT A

LAW OFFICES
OF
KATS, JAMISON, VAN DER VEEN & ASSOCIATES[†]

25 BUSTLETON PIKE
FEASTERVILLE, PA 19053

MARINA KATS+Δ
SETH J. JAMISON* (1961-1998)
MICHAEL T. VAN DER VEEN** Δ

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MICHAEL N. DAVID***
+ Member PA, NJ, NY & Wash., D.C. Bars
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ΔLLM in Trial Advocacy

December 27, 2006

Deborah J. Massaro, Esquire
White and Williams LLP
824 No. Market Street, Suite 902
P.O. Box 709
Wilmington, DE 19899-0709

Re: Criswell v. Lydia Adair McFadden/Christiana Care Health
U.S.D.C. Delaware C.A. No. 05-CV-00321-GMS

Dear Ms. Massaro:

Enclosed you will find a complete copy of the Plaintiff's medical records and reports. See attached list. Please be advised that Plaintiff reserves the right to call these physicians at Trial as experts to testify as to Ms. Criswell's diagnoses, prognosis and injuries caused by the incident.

Further, pursuant to the deposition testimony of Ms. Criswell relative to wage loss and loss of future earnings, I have enclosed the Curriculum Vitae of Royal T. Bunin as Plaintiff's economic expert. His report will be provided upon receipt.

Thank you.

Very truly yours,



NELSON LEVIN

:lrt
Enclosures

KIMBRA CRISWELL

MEDICAL SUMMARY
D/Accident: May 23, 2002

Exhibit A	Advanced Foot & Ankle Center	5/28/02 – 11/25/02 (no bills)
Exhibit B	Pro Physical Therapy	7/24/02 – 11/27/02
Exhibit C	Vascular Consultants, P.A.	8/5/02 – 9/3/02
Exhibit D	Christiana Care	8/5/02 - 8/15/02
Exhibit E	Lawall Prosthetics/Orthotics, Inc.	8/9/02
Exhibit F	Johns Hopkins Medicine	10/18/02
Exhibit G	Orthopedic Specialists of SW Florida	12/30/02 – 5/15/03
Exhibit H	Advanced Pain Management Spec.	2/25/03
Exhibit I	Foot & Ankle Center/ Drs. John J. Adler/Andrew W. Belis	5/29/03 – 10/25/04
Exhibit J	LMR Imaging - MR	11/7/03
Exhibit K	Valley Radiologists - MRI Southwest Diagnostic	5/7/05 5/7/05 – billing for MRI
Exhibit L	Sumit Dewanjee, M.D./Ortho Surg.	5/2/05 – 5/10/06
Exhibit M	Endurance Rehabilitation	3/31/06 – 5/3/06
Exhibit N	Prescriptions	

EXHIBIT B

LAW OFFICES

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January 10, 2007

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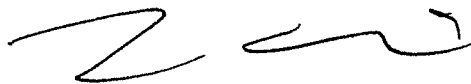
Dear Ms. Massaro:

Enclosed you will find the report of Bunin Associates relative to our client, Kimbra Criswell, along with the CV of Royal A. Bunin, MBA.

Please call me upon your receipt of this report to discuss this matter further.

Thank you.

Very truly yours,



NELSON LEVIN

:lrr

Enclosure

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May 18, 2006

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U.S.D.C. Delaware C.A. No. 05-CV-00321-GMS

Dear Ms. Massaro:

Enclosed please find Plaintiff's response to Defendants' Request for Production of Documents. Please note Plaintiff reserves the right to introduce into evidence all documents contained herein, as well as any documents produced by any party in any legal proceeding in this matter.

As our client lives in Phoenix, Arizona at the present time, we have sent the Interrogatories and Authorizations to her for response and will forward same as soon as they are received.

Very truly yours,



NELSON LEVIN

:lrt
Enclosures